IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 13TH AUGUST 2007 / 22ND SRAVANA 1929

Bail Appl..No. 4825 of 2007()

CRMP.1387/2007 of DISTRICT COURT, PATHANAMTHITTA
[CRIME NO.390/2007 OF PANDALAM POLICE STATION

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PETITIONERS/ACCUSED 1 & 2

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1. P.V.ARAVINDAKSHAN, AGED 30 YEARS,
S/O. LATE VELUTHAKUNJU, PADINJATTETHIL HOUSE,
MUDIYOORKONAM P.O., PANDALAM.

2. B.PRIYARAJ, AGED 27 YEARS,
S/O. BHARATHAN, THADATHIL HOUSE,
MUDIYOORKONAM P.O., PANDALAM.

BY ADV. SRI.S.MUHAMMED HANEEFF

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REP. BY
THE CIRCLE INSPECTOR OF POLICE, PANDALAM POLICE STATION, (CRIME NO.390 OF 2007), REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 13/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

B.A.No. 4825 of 2007

Dated this the 13th day of August 2007

O R D E R

Application for anticipatory bail. Petitioners are accused 1 and 2. Altogether there are nineteen accused persons. They face allegations inter alia under Section 452 I.P.C which is the only non-bailable offence alleged against them.

2. The crux of the allegations is that a group of persons including petitioners/accused 1 and 2 who were members of an unlawful assembly had allegedly gone to the workshop and the house of the de facto complainant and indulged in wanton acts of violence causing damage, loss and deterioration to the property of the de facto complainant. The petitioners are named in the F.I.R. Investigation is in progress. The petitioners apprehend imminent arrest.

2. The learned counsel for the petitioners submits that the petitioners are absolutely innocent. Totally false and vexatious allegations are raised against them. In fact, the incident did not take place in the manner alleged by the prosecution. There was some wordy and physical altercations in

a 'thattukada' prior to the alleged incident. The present allegations are being raised falsely and with vexatious intent. On the complaint of the first accused, a crime has been registered alleging offences punishable inter alia under the Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act against the de facto complainant and others. In any view of the matter, anticipatory bail may be granted to the petitioners, it is prayed.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that it is true that another case has been registered. But that is not a counter case to this case That earlier incident operated as a motive for the present incident in this crime. There are no circumstances justifying or warranting the invocation of the discretion under Section 438 Cr.P.C. In these circumstances this petition may be dismissed, submits the learned Public Prosecutor.

4. Having considered all the relevant inputs, I find force in the opposition by the learned Public Prosecutor. Only non-bailable offence alleged is the one punishable under Section 452 I.P.C. It is for the petitioner to appear before the investigating officer or the learned Magistrate having jurisdiction and then

seek regular bail in the ordinary course. I find no features in this case which would justify the invocation of the jurisdiction under Section 438 Cr.P.C.

5. In the result, this petition is dismissed. Needless to say, if the petitioners surrender before the investigating officer or the learned Magistrate and apply for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously.

(R.BASANT, JUDGE)

jsr

// True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007